

Land use: The end of extortion



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In land use, if you want a variance from the code, in order to build your structure to a scale that will generate a suitable profit for your venture, or to use your land for a purpose that will fulfill a business need that is not approved in the code for your district, it is always a good idea to donate a park to your municipality, or cleanup the waterways, or sponsor a charity or two. However, what happens when the municipality starts to condition their land use permission on such expenditures? Is there a problem with a requirement of a quid pro quo in land use? Can the municipality require the payment of monies (beyond regular permit fees) in order to receive an approval? Is extortion permissible?

No said the Supreme Court of the United States in the case of *Koontz v. St. Johns River Water Management District* on June 25, 2013. In the case, Koontz initially offered to deed three-quarters of his property to the municipality in order to mitigate any resulting damages to the wetlands that he wished to build upon - legal bribery. Yet, the municipality (a/k/a - The Mafia) thought that such an offer was not enough (perhaps they wanted all of his property) for the vig, which they expected to receive in order to bestow their blessing. So The Mafia required Koontz to "hire contractors to make improvements to District-owned land several miles away" from the project site that he wished to build upon if he wanted their blessing. To be clear, the municipality required the expenditure of monies at an offsite property that was not owned by the applicant in order for the applicant to receive a permit to build on the property, which he did own.

In rendering its decision, the Court reasoned that "extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them." This reasoning was derived from two (2) prior decisions of the Supreme Court, *Nollan* and *Dolan*, where the Court had established that the approval of a permit on condition of turning over property was not permissible absent a "nexus" and "rough proportionality" between the property that the government demands and

the social costs of the applicant's proposal."

The situation in *Koontz* was different in that the claim resulted from the denial of a permit when the applicant refused the demands of the government. He stood-up to the mob. Specifically, the Court permits a town, village or city board to condition their approval on mitigation efforts the development may cause, but cannot force a developer to become a public benefactor for the improvement of unrelated property.

So, developers, remember to make proposals while being prepared to mitigate the negative effects of your development. You break it; you fix it - it's that simple. But, stay strong to governmental demands that require you to become the benefactor (a/k/a dollars) to the public and to have your money distributed however the government deems fit. This extortion for a permit that you desperately need to build on your land and to use your property is not permitted. You know that the government cannot "impermissibly burden the right not to have property taken without just compensation." So, know your rights.

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